IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

JASWANT SINGH BALOT & OTHERS. V. THE STATE OF RAJASTHAN AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.2011/2005, under Article 226 of the Constitution of India.

DATE OF ORDER: 1.9.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr.J.P.Joshi, for Petitioners.
Mr.Jagdeep Dhankar for Respondent No.2.
Mr.Rajesh Joshi, for Respondent.
Mr.N.M.Lodha, Additional Advocate General, for Respondent No.1.

BY THE COURT:

REPORTABLE.

By this writ petition, petitioners have prayed that respondents may be restrained from filling up the vacancies of the Deputy Superintendent of Police (Promotion Quota) from out of turn promotion. The petitioners have also prayed that the respondents may be directed to consider candidature of the petitioners for promotion to the post of the Deputy Superintendent of Police on the basis of seniority-cum-merit in

accordance with the Notification dated 23.7.2003 (Annexure 4) and all the posts, which are in existence, against the promotion quota, may be filled in as per the revised criteria of seniority-cum-merit.

Brief facts, giving rise to the instant petition are that the petitioners are working on the post of Inspector. A tentative seniority list (Annexure 1) was issued by the respondents, in which the names of the petitioners have been shown at serial Nos. 263, 264, 265, 282, 200, 261, 277 and 276 respectively. The petitioners are within the zone of consideration for promotion to the post of Deputy Superintendent of Police (Dy.S.P.) as per the provisions of the Rajasthan Police Service Rules, 1954 (hereinafter referred to as 'the Rules of 1954'). As per part Part V of the Rules, 1954, which lays down the procedure for recruitment by promotion, the post of Deputy Superintendent of Police is required to be filled-in by way of promotion and direct recruitment. Rule 28A deals with the revised criteria, eligibility and procedure for promotion to junior, senior and other post encadred in the service. The vacancies are required to be determined yearwise on first April of every year.

Earlier, under Rule 28A (4) of the Rules, 1954, there was

a provision with regard to respective quote for promotion, which reads as under :-

> "(4) Selection for promotion in the regular line of promotion from the post/posts not included in Service to the lower post or category of post in the service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50...."

Thus, the promotions were required to be made on the basis of merit and seniority-cum-merit in the proportion of 50 : 50 respectively.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, vide Notification dated 18.2.1998 (Annexure 3), a new Rule 28AAA was inserted, in which it was provided that the promotion will also be made out of turn as promotion for gallantry. It has specifically been provided that this gallantry promotion will be made only against the vacancies, which are to be filled in on the basis of merit in any particular year and for the same under new Rule 28AAA, a sub-rule (3) was added, in which it was specifically provided that promotion under this rule shall be made against the vacancies to be filled-in on the basis of merit in that particular year.

The Department of Personnel (DOP), Government of Rajasthan, Jaipur issued a Notification dated 23.7.2003 (Annexure 4), by which amendment was made in the Service Rules, including the Rules of 1954 and that by way of inserting new procedure for promotion, all the posts were required to be filled in by way of seniority-cum-merit only and the said promotion was inserted as per revised criteria of sub-rule (5), in which it was provided that selection for promotion on the post included in the service shall be made on the basis of seniority-cum-merit. The promotion to the highest post in the State Service was allowed to be made on the basis of merit alone, but the junior posts were to be filled in by way of seniority-cum-merit only. Thus, the earlier provision to fill up the vacancies in the proportion of 50 : 50 on the basis of seniority-cum-merit and merit respectively was deleted.

All the petitioners, whose names are in the seniority list, are within the zone of consideration for promotion to the post of Deputy Superintendent of Police and the vacancies, which occurred on the first April of every year, after the Notification dated 23.7.2003 (Annexure 4), are required to be filled in by applying the criteria of seniority-cum-merit, because as per the newly revised criteria, there is no provision for promotion on

the basis of merit.

Notwithstanding the fact that there is no provision for promotion on the basis of merit and promotion out of turn quota can be made only against the merit. One Shri Vipin Sharma, who was much junior than the petitioners, was granted out of turn promotion against the vacancies of 2004-05.

Now, the five persons, namely, Ramsingh, Damodar Gujar, Raghuveer Singh, Rajeev Dutta and Bhanwarlal, who are working as Inspectors and are much junior to the petitioners, are sought to be given promotion out of turn by the respondents in accordance with Rule 28AAA of the Rules, 1954, as they have got certificates in their favour and are not upto the level of gallantry work.

Being aggrieved by the aforesaid action of the respondents, the petitioners have preferred the instant petition under Article 226 of the Constitution of India.

It is submitted by the learned counsel for the petitioners that as per Notification dated 18.2.1998 (Annexure 3), out of turn promotion for gallantry work could be made only against

the vacancies to be filled in on the basis of merit in the particular year, but, now, after issuance of the Notification dated 23.7.2003 (Annexure 4), new criteria for protmotion has been laid down, in which there is no promotion on the basis of merit and all the vacancies of the Deputy Superintendent of Police are required to be filled in by way of seniority-cum-merit.

It is further submitted by the learned counsel for the petitioners that the gallantry pre-supposes extra-ordinary discharge of duties with bravery and at least it does not pre-suppose the simple appreciation or commendation letters in one's favour, for routine police duties.

Apart from that, there is no exchange of fire between the police-party and other side and no life hazard work, i.e., exemplary courageous work has been done by the concerned Police Inspectors, therefore, it is not considerable within the periphery of gallantry work. Thus, the learned counsel for the petitioners submits that in the absence of heroic courageous work to give promotion to the aforesaid Inspectors out of turn in terms of Rule 28AAA only on the basis of appreciation certificates , is not justiciable.

It is also submitted by the learned counsel for the

petitioners that there is no provision for promotion on the post of Deputy Superintendent of Police on the basis of merit after issuance of Notification dated 23.7.2003 (Annexure 4), because now, it has been decided to fill up the vacancies meant for promotion quota from the criteria of seniority-cum-merit only, whereas, according to the learned counsel, the out of turn promotion could be made only against the quota of merit alone. For the year, 2004-05, five vacancies of Deputy Superintendent of Police in the general category have become available and strangely, out of these five vacancies, all vacancies are sought to be filled in by out of turn promotion under the garb of gallantry work.

It is contended by the learned counsel for the petitioners that the respondents are depriving the petitioners from legal and constitutional right of being considered for promotion to the post of Deputy Superintendent of Police, though they are in the zone of consideration.

It is further contended by the learned counsel for the petitioners that after the revised criteria promulgated while effecting amendment vide Notification dated 23.7.2003 (Annexure 4), when the promotions are to be made strictly on the basis of seniority-cum-merit, then the earlier Notification

dated 18.2.1998 (Annexure 3) becomes redundant and no promotion out of turn can be made, because no vacancies now, can be filled in by way of merit after issuance of the Notification dated 23.7.2003 (Annexure 4).

It is also contended by the learned counsel for the petitioners that according to the Rules of 1954, earlier promotions to the post of Deputy Superintendent of Police (against the vacancies of promotion quota) were to be made on the basis of seniority-cum;merit and merit in the proportion of 50 : 50 respectively, but, thereafter, amendment came to be made while issuing the Notification dated 23.7.2003 (Annexure 4) and it came to be provided that the vacancies earmarked for promotion quota, are solely to be filled in by way of applying the criteria of seniority-cum-merit only. In such a situation, when there is no promotion on the basis of merit, then provisions of Rule 28-AAA of the Rules, 1954 cannot be taken into consideration for the purpose of giving out of turn promotion.

Learned counsel for the petitioners has vehemently argued that the word 'gallantry' as such is not defined, but from the common parlance, it is very much clear that it pre-supposes extra-ordinary discharge of service and it cannot be said that

one is having gallantry performance on the basis of appreciation letters. The appreciation letters cannot be held to be sufficient to conclude that one has done gallantry work.

Learned counsel for the petitioners has also argued that even if the gallantry promotion in terms of Rule 28-AAA is required to be given, it ought to have been given on the basis of seniority-cum-merit only and, according to him, it is the true meaning of harmonious construction of Rule 28-AAA. For example, on account of gallantry performance, a junior Inspector is required to be promoted in terms of Rule 28AAA, then he should be accorded promotion to the post of Deputy Superintendent of Police on the basis of seniority-cum-merit, meaning thereby the junior Inspector should wait for his turn till the Inspectors, who are Senior to him, are promoted to the post of Deputy Superintendent of Police.

It is significante to note that if the aforesaid example of Shri J.P.Joshi, learned counsel for the petitioners, is accepted, then it will frustrate the purpose and intent of Rule 28AAA, for which it has been framed/enacted by the Legislation.

In support of his contentions, learned counsel for the petitioners has placed reliance on the cases of M.Pentiah v. Veeramallappa (AIR 1971 SC 1107). He has also placed reliance on Dadi Jagannadham v. Jammulu Ramulu and Others

(2001) 7 SCC 71. Though it was a matter pertaining to Article 127 of the Limitation Act, but with regard to interpretation, their Lordships of the Supreme Court held that the settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly, if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. Learned counsel for the petitioners has invited my attention to the case of Ajit Singh (II) v. State of Punjab (1999 (7) SCC 209). In para 23 of the Judgment, their Lordships of the Supreme Court held as under :-

> "23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16 (1). For example, if the promotion is by rule of "Seniority-cum-suitability", the eligible seniors at the basis level as per seniority fixed at the level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category, they

> would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the seniormost person at the basis level is to be considered first and then the others in the line of seniority.). That is how right to be considered for promotion and the "seniority" attached to such promotion become important facts of the fundamental right guaranteed in Article 16 (1)".

Learned counsel for the petitioners placed reliance on the case of Government of India v. C.A.Balakrishnan & Others (1975 (3) SCC 256), in which question for consideration was whether the High Court was right in directing the Government of India to consider the claim of Respondent No.1, who was senior to Respondent No.2, in the cadre of Godown – Dock Superintendent. While dismissing the appeal of the Government

of India, their Lordships of the Supreme Court, in para 13, held as under :-

> "13. The case of Respondent No.1 before the High Court was that he was senior to Respondent No.2 and that his case was not considered when Respondent No.2 was appointed to the post of Superintendent. The High Court was of the view that on November 1, 1057, when Respondent No.2 was promoted to the post of Superintendent, the post was not a selection post but a post to which promotions were made on the basis of seniority-cum-fitness and that the case of Respondent No.1 should have been considered on that basis and not on the basis that it was a selection post. The Court, therefore, issued a writ directing the Government to consider the case of Respondent No.1 for promotion to the post of Superintendent as on November 1, 1957, when Respondent No.2 was promoted and according to the rules then in force and that, if he is found fit for promotion as on that date, "the promotion already given to him to that position be dated back to November 1, 1957, and he be granted all consequential benefits and if he is not found fit for promotion as on that date, he will not be entitled to any relief."

While submitting the written submissions, the learned counsel for the petitioners has raised two questions of law, which read as under :-

> (a) Whether after the amendment made in the Rajasthan Police Service Rules, 1954 vide Notification dated 23rd July, 2003, the effect can be given to the provisions of Rule 28AAA of the said Rules.
>
> (b) Whether out of turn promotion can be given in terms of Rule 28AAA when said promotions are required to be given against vacancy to be filled in on the basis of merit in that particular year."

By way of written submissions, learned counsel for the petitioners has invited my attention to Sub-rules (4), (6) and (11) of Rule 28A of the Rules, 1954, as well as sub-rule (3) of Rule 28-AAA, which are reproduced as under :-

> "(4) Selection for promotion in regular line of promotion from the post/posts not included in service to the lower post or category of post in the service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50
>
> Provided that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules."

> "(6) Selection for promotion to all

other higher posts or higher categories of posts in the State service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50

Provided that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules.

Explanation - If in a service, in any category of post, numbe of posts, available for promotion is an odd number then for purpose of determining the vacancies for selection by promotion on the basis of seniority-cum-merit in the proportion of 50: 50, the following cyclic order shall be passed -

The first vacancy by seniority-cum-merit;
The subsequent vacancy by merit;
The cycle to be repeated."

"(11) For the purpose of selection on the basis of merit, no person shall be selected, if he does not have "outstanding" or "very good" record in at least five out of seven years preceding the year for which the D.P.C. Is held."

"28-AAA (3) The promotion under this Rule shall be against the
vacancy to be filled on the basis of merit in that particular year."

A bare perusal of sub-rule (4) of Rule 28A of the Rules reveals that promotions are required to be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50. Similarly, it is clear from sub-rule (6) of Rule 28A of the Rules that the vacancy is required to be filled up by seniority-cum-merit and the subsequent vacancy by merit in the ratio of 50 : 50. It may be mentioned that sub-rule (11) of Rule 28A lays down the eligibility criteria for making promotion under the quota on the basis of merit. Thus, according to the scheme of the Rules, promotions are required to be made on the basis of seniority-cum-merit and merit and while considering the merit of a candidate, the Departmental Promotion Committee (D.P.C.) is required to see that the person is having at least five out of seven "outstanding" or "very good" Annual Confidential Reports (ACRs) in the preceding year, for which the D.P.C. is held and, therefore, **prior to amendment,** rule envisages two channels of promotion, i.e., on the basis of seniority-cum-merit and on the basis of merit.

So far as newly inserted Rule 28-AAA of the Rules, 1954 is concerned, it has also been reproduced in this order. However, a bare reading of sub-rule (3) of Rule 28-AAA of the Rules reveals that such promotions are required to be made

against the vacancy which are required to be filled on the basis of merit in that particular year. Thus, learned counsel for the petitioners submits that the out of turn promotions in terms of Rule 28-AAA can be made only when promotions are required to be made against the vacancies to be filled on the basis of merit in that particular year. He also submits that as a logical corollary, no out of turn promotions can be made, if the vacancies are not required to be filled on the basis of merit in that particular year.

Learned counsel for the petitioner has also drawn my attention to sub-rule (5) of Rule 3 of the Notification dated 23rd July, 2003 (Annexure 4), which is reproduced below :-

> "(5) Selection for promotion on the post included in the service shall be made on the basis of seniority-cum-merit."

Thus, according to the learned counsel for the petitioners, by amendment in the Notification dated July 23, 2003, the promotions are required to be made only on the basis of seniority-cum-merit as envisaged in the un-amended Rules, 1954. Further, learned counsel for the petitioners submits that as a consequence of the amendment, now, all the promotions under the Rajasthan Police Service Rules, 1954 are required to

be made on the basis of seniority-cum-merit and not on the basis of merit. He also submits that effect can be given to sub-rule (3) of Rule 28AAA only, when the vacancies are required to be filled on the basis of merit and not otherwise.

Learned counsel for the petitioners has also invited my attention to paras 3, 5 and 6 of the reply, filed by the State Government and submitted that the State Government has admitted the position that the promotions are required to be made strictly on the basis of seniority-cum-merit and not on the basis of merit.

It may be mentioned that the State Government has specifically stated in para 13 of its reply that no legal or constitutional right of the petitioners is going to be infringed. More so, until and unless there is a challenge to Rule 28AAA, it is not just and proper on the part of the petitioners to say that no promotion is required to be given, though there is a provision for such promotion under Rule 28AAA of the Rules, 1954. Similarly, in ground No.(iv) of the reply, it has been stated that if harmonious construction is made, then it is clear that whenever promotion is given under Rule 28AAA, then that would amount to gallantry promotion and the persons who will be so chosen, will the kept at the bottom as envisaged under

Rule 33 of the Rules. Thus, the intention of the reply of the State Government was with reference to Rule 28AAA vis-a-vis Rule 28A. Out of turn promotion for gallantry in accordance with Rule 28AAA is different than the promotions in terms of Rule 28A of the Rules, 1954. Rule 28A does not at all deal with the issue of out of turn promotion for gallantry, and it only prescribes the mode of general promotion and is standing on different footing.

Learned counsel for the petitioners has placed reliance on para 18 of the judgment rendered by their Lordships of the Hon'ble Supreme Court in Dadi Jagannadham v. Jammulu Ramulu and Others (2001) 7 SCC 71), which is reproduced hereinbelow :-

> "Viewed in this context the intention of the Legislature is extending the period under Article 127 of the Limitation Act may be seen. It is very clear from the statement of Objects and Reasons, which have been set out hereinabove, that the period under Article 127 of the Limitation Act was extended from 30 days to 60 days in order to give more time to persons to make deposits. The legislature has noted that the period of 30 days from the date of sale was too short and often caused hardships because judgment-debtors usually failed to arrange for money within that period. The question then would be whether by merely amending Article 127 of the Limitation Act, the legislature has achieved the

object for which in increased the period of limitation to file an application to set aside sale.

18. Having given our careful consideration to the question, we are of the opinion that there is no anomaly and that there are no different period of limitation for making deposits and/or filing an application for setting aside the sale. It is by virtue of Order 21 Rule 89 CPC that an application for setting aside a sale and a deposit can be made. Order 21 Rule 89 CPC does not prescribe any period within which the application is to be made or deposit is to be made. All that Order 21 rule 92 (2) provides is that if the deposit made within 30 days from the date of sale and an application is filed then the court would have no discretion but to set aside the sale. That does not mean that if the deposit is made after 30 days the court could not entertain the application. If the deposit is made beyond the period of 30 days, but within the period of 60 days, then it will be within the discretion of the court whether or not to grant the application. Thus, an application can be made within the period prescribed under Article 127 of the Limitation Act. As an application can be made within 60 days and, as stated above, no period for making a deposit is prescribed under Order 21 Rule 92 (2) the deposit can also be made within 60 days. In our view, therefore, the view expressed in P.K.Unni Case that Order 21 Rule 92 (2) CPC prescribed a period of limitation for making a deposit is not correct."

Learned counsel for the petitioners submitted that the

similar view has been taken by their Lordships of the Supreme Court in the case of M. Pentiah and others v. Muddala Veeramallappa and others (AIR 1961 SC 1107). Reference, in this regard, may be made to para 27 of the said judgment, wherein, their Lordships of the Supreme Court, while referring to the judgment rendered by Denning L.J., sought to rectify a mistake committed by draftsman. The relevant portion of the judgment reads as under :-

> "Where the language of a stature, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.....Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a Statute, nor to add words to it, and it has been said that they will only do so where there is repugnancy to good sense."

Learned counsel for the petitioners also placed reliance on the judgment given In Seaford Court Estates Ltd. v. Asher (1949-2 All ER 155 at p.164), wherein Denning L.J. Said -

> "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... And then he must supplement the written word so as to give "force and life" to the intention of the legislature....A judge should ask himself the question, how if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out< He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

While placing reliance on the cases of Government of India v. C.A.Balakrishnan (1975 (3) SCC 256 and Ajit Singh (II) v. State of Punjab (1999 (7) SCC 209), learned counsel for the petitioners submitted that where seniority is criteria for promotion, the comparative merit of the candidate cannot be looked into and promotions can be made only on the basis of seniority, if there are no adverse entry in the service record of the senior person.

Lastly, learned counsel for the petitioners submitted that the legislative intent in the present case is to do away with the promotions granted on the basis of merit and since no vacancy is required to filled on the basis of merit, effect cannot be given to Rule 28AAA of the Rules, 1954. According to the learned

counsel for the petitioners, Rule 28A as amended by Notification dated July 23, 2003 can co-exist with Rule 28AAA and Rule 28AAA shall become operational only when promotions are required to be made on the basis of merit. Learned counsel for the petitioners pointed out that the harmonious construction of this rule leads to irresistible conclusion that effect cannot be given to Rule 28AAA, unless vacancies are required to be filled in on the basis of merit under Rule 28A and once Rule 28A has been amended and promotion on the basis of merit has been done away with, effect cannot be given to Rule 28AAA.

The instant matter pertains to **out of turn** promotion for gallantry under Rule 28AAA of the Rules, 1954 and it has an over-riding effect over all the provisions of the Rules, therefore, the authorities cited above by the learned counsel for the petitioners, looking to the facts and circumstances of the case in hand, are of no help or assistance to him.

In reply, Shri N.M.Lodha, learned Additional Advocate General, appearing on behalf of the State of Rajathan, has raised preliminary objections to the maintainability of the writ petition and submitted that Shri Ramsingh, Shri Damodar Gujar, Shri Raghuveer Singh, Shri Rajeev Duta and Shri Bhanwarlal Shishodia are going to be promoted on the post of

the Deputy Superintendent of Police under Rule 28AAA of the Rules, 1954, as they have rendered gallantry services. It is further submitted by Shri Lodha that factual aspects of all the petitioners are different and no same cause of action has arisen, so, in view of Rule 375 of the Rajasthan High Court Rules, the writ petition of the petitioners is not maintainable. Apart from that, he raised an objection to the locus standi of the petitioners to file the instant petition as, according to him, if the respondents, as mentioned by the petitioners in the writ petition, are promoted under Rule 28AAA, then no prejudiced will be caused to them.

It is submitted by Mr.N.M.Lodha, learned Additional Advocate General, appearing on behalf of the State of Rajasthan that the relief of the petitioners is founded on the same cause of action and a common cause of action has arisen, as stated by the petitioners in their writ petitions, so, in view of Rule 375 (4) of the Rajasthan High Court Rules, the writ petition is not maintainable

It is further submitted by Mr.Lodha that prior to amendment made in the year, 2003, in the Police Service Rules, 1954, there were two channels of promotion for the post of the Deputy Superintendent of Police, namely, (i) merit; and

(ii) seniority-cum-merit, but, after amendment effected in Rule 28A, in July, 2003, there remains only one channel of promotion, i.e., the seniority-cum-merit. He pointed out that vide Notification dated 19.2.1998 (Annexure 3), Rule 28AAA has been inserted and, thereafter, no amendment has been made in the Rules, 1954. It is true that there is no corresponding amendment in Rule 28AAA, wherein the word 'merit' was required to be deleted, but, if Rule 28AAA, as pointed out by the petitioners, is allowed to be read, then that would amount to deletion of said provision, namely, Rule 28AAA and, in such circumstances, the harmonious construction of the rule would be required to be given for promotion under Rule 28AAA, that is seniority-cum-merit only. According to Mr.Lodha, when there is only one channel for promotion, namely, seniority-cum-merit, then the vacancies which could have been filled in on the basis of merit, have been merged to seniority-cum-merit. In such circumstances, the word 'merit' has merged in seniority-cum-merit. So, even if in any particular provision of the rule, the word 'merit' has been used, that would be treated as seniority-cum-merit. Earlier, there was ratio of 50 : 50 for fulfilling the vacancies for the post of the Deputy Superintendent of Police, by way of promotion, but, now, there is only one channel, i.e., the seniority-cum-merit.

It is also submitted by Mr.Lodha that on account of gallantry performance, one Vipin Sharma has been promoted under Rule 28AAA against the vacancies for the year, 2003-04, but the petitioners have not made him party in the instant writ petition. He submitted that it is true that there is a matter under consideration for giving promotion under Rule 28AAA to the four persons, namely, (1) Ram Singh, (2) Raghuveer Singh, (3) Rajeev Dutta and (4) Bhanwarlal Shishodia, but the matter of Damodar Gujar is not under consideration for giving him promotion under Rule 28AAA.

Lastly, it is argued by Mr. N.M. Lodha that the gallantry award is a promotion of special category, so no quota for gallantry award has been fixed. He, however, admitted that there should be transparency in awarding the promotion out of turn by way of gallantry award. Neither the petitioners have challenged Rule 28AAA of the Rules, nor there is any prayer in the instant petition to strike down the same, therefore, no legal or constitutional rights of the petitioners are going to be infringed. Mr. Lodha pointed out that if harmonious construction of Rule 28AAA is made, then it is clear that whenever promotion under the said rule is given, it would amount to gallantry promotion and the persons who will be so chosen, will be kept at the bottom of the seniority, as envisaged

under Rule 33 of the Rules.

In support of his contentions, Mr. Lodha has placed reliance on the case of R.S.Raghunath v. State of Karnataka (AIR 1992 SC 81) and submitted that the Special Rules cannot be affected by the General Rules. In case, there are no Special Rules, then naturally, the General Rules would be applicable. He also placed reliance on N.C. Singhal v. Union of India (AIR 1980 SC 1255), in which their Lordships of the Supreme Court held that it is a well recognised canon of construction that the construction which makes the Rule otiose or unworkable should be avoided where two constructions are possible and the Court should lean in favour of the construction which would make the rule workable and further the purpose for which the rule is intended. Thus, Rule 28AAA is obviously intended to give **out of turn** promotion to the upright police officers who have given gallantry performance.

Mr. Jagdeep Dhankar, learned senior counsel for the respondents, raised objections to the maintainability of the writ petition and submitted that that the petitioners have challenged the procedure provided under Rule 28AAA of the Rules, 1954, and without challenging the validity of this Rule,

the instant petition of the petitioners is not maintainable. This rule was inserted in the year, 1998, by way of amendment, and was kept intact in the subsequent amendment of the Rules of 2003. The object behind the said rule is to choose/select the persons, who have put best efforts, skill and engineering in performance of their duty. By way of promotions, such persons are rewarded in lieu of their outstanding work of gallantry. He submitted that the concept of supersession is relevant in the context of regular and normal promotion and not in the context of gallantry promotion.

Mr.Dhankar, learned senior counsel for the respondents, also raised objection with regard to the maintainability of the writ petition and submitted that that the petitioners are having different date of appointment as Inspector and different seniority position, so the petitioners have different cause of action. Thus, in view of Rule 375 (4) of the Rajasthan High Court Rules, the joint writ petition filed by the petitioners is not maintainable. Apart from that, the petitioners themselves have stated in the instant petition that five persons, namely, Ram Singh, Damodar Gurajr, Raghuveer Singh, Rajeev Dutta and Bhanwar Lal Shishodia, who are much junior to the petitioners, are sought to be given promotion out of turn, but, in spite of that, none of them has been impleaded as party to the writ

petition. Not only that, even Bhupendar Singh – who was earlier promoted against the vacancy of 2002-03 and Vipin Sharma – who was promoted against the vacancy of 2004-05, have not been impleaded as parties to the writ petition. Thus, in the absence of impleadment of necessary parties, the instant petition is not maintainable.

It is submitted by Mr.Dhankar, learned senior counsel for the respondents, that Rule 28AAA provides out of turn promotion for gallantry and outstanding performance. Prior to 23.7.2003, there were two criterion for making promotion – one on the basis of seniority-cum-merit, and two - on the basis of merit. After the amendment, the only criteria left for making regular promotion is seniority-cum-merit and out of turn promotion as provided under Rule 28-AAA.

It is further submitted by Mr.Dhankar, learned senior counsel for the respondents, that it is clear from Rule 28-AAA and proviso (v) of Rule 33 and newly added proviso (vi) of Rule 33 that it is an independent rule, having no relevance with procedures provided under other rules. According to Mr.Dhankar, the opening words of Rule 28-AAA clearly indicate that this rule is having a separate entity and separate importance and has been inserted by the legislature with the object to choose/select persons who have performed

outstanding work of gallantry, which is not expected in usual discharge of duty. To reward such persons, Rule 28-AAA has been inserted and it is now well proved that more efficient officers who are rewarded by way of out of turn promotion, have subsequently proved to be an asset to the Department. In case if such persons, who have put their lives to risk while performing their duties, are not rewarded, then certainly, it will affect their efficiency, skill and engineering of force and further, from the perusal of amended proviso (vi) to Rule 33, it is clear that person promoted under Rule 28-AAA shall rank junior to all the persons senior to him and appointed by promotion in the same year.

It is also submitted by Mr.Dhankar, learned senior counsel for the respondents, that from a bare perusal of the Notification dated July 23, 2003 (Annexure 4), it is clear that only Rule 28-A of the Rules, 1954 was amended, not the Rule 28-AAA, so, the promotions, made under existing Rule 28-AAA, are the extraordinary promotions and cannot be equated with normal and regular promotions. Apart from that, the question of zone of consideration would come into the picture only when the procedure for making normal and regular promotions will commence and not otherwise.

It is contended by Mr.Dhankar, learned senior counsel for the respondents, that the Head of the Department has made detailed and reasoned recommendations for out of turn promotions of these persons in accordance with Schedule V of Rule 28-AAA of the Rules, because of their Outstanding Work of gallantry while putting their lives to risk, therefore, the cases of these persons are under consideration of the State Government for making their out of turn promotions.

It is further contended by Mr.Dhankar, learned senior counsel for the respondents, that while exercising the power under Rule 28-AAA, the Department makes deep and close scrutiny of each of the cases and it is not the question of one or two officers, who could be biased, but it is a team work to scrutinize such cases in accordance with the procedure prescribed under the Rules.

It is also contended by Mr.Dhankar, learned senior counsel for the respondents, that at the time of making amendment vide Notification dated July 23, 2003 (Annexure 4), Rule 28-AAA was kept intact by the Legislature, meaning thereby that there was no legislative intent to remove the provisions of out of turn promotions to the persons who while

performing outstanding work of gallantry duty put their lives to risk. Thus, the case of the petitioners is not believable that after the issuance of the Notification dated July 23, 2003 (Annexure 4), no out of turn promotion for gallantry performance in terms of Rule 28-AAA can be made. According to Mr.Dhankar, the present matter is not a matter of regular promotion, but it is a case of promotion through out of turn on the basis of gallantry work. The Notification dated July 23, 2003 cannot be made applicable to the vacancies determined as on 1.4.2003 and the situation is clear from a bare perusal of sub-rule (11) of Rule 28A of the Rules, 1954.

In support of his contentions, Mr.Dhankar, learned senior counsel for the respondents, has placed reliance on the case of Sri Venkataramana Devru and Others v. State of Mysore and Others (AIR 1958 SC 255), in which their Lordships of the Hon'ble Supreme Court has held as under :-

> "The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted

> that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction."

In Krishan Kumar v. State of Rajasthan & Others (AIR 1992 SC 1789), it was held by their Lordships of the Supreme Court that –

> "It is settled principles of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed to avoid a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same."

In Sultana Begum v. Prem Chand Jain (AIR 1997 SC 1006), their Lordships of the Supreme Court, while considering the essence of the rule of "harmonious construction", observed that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This rule of construction which is also spoken of as "exvisceribus actus" helps in avoiding any inconsistency either within a Section or between two different Sections or provisions of the

same Statute. It was also observed that the Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

With regard to the harmonious construction of the rules, their Lordships of the Supreme Court in Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Others (AIR 1962 SC 1044) held as under :-

> "It is then the duty of the Court to reconcile the entries and bring about harmony between them. The underlying principle in such cases is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Constitution and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in is ordinary ad natural meaning. Thus, every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make if nugatory.

In J.K.Cotton Spinning and Weaving Mills Co. Ltd. V. State of Uttar Pradesh and Others (AIR 1961 SC 1170), with regard to the rule of applicability of harmonious construction,

their Lordships of the Supreme Court held as under :-

> "We have to apply the rule of harmonious construction. In applying the rule, however, we have to remember that to harmonise is not to destroy. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also."

With regard to non-obstante clause, their Lordships of the Supreme Court in Union of India and Another v. G.M.Kokil and Others (AIR 1984 SC 1022) held as under :-

> "It is well know that a non-obstante clause is a legislative devise which is usally employed to give over riding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

Again, regarding non-obstante clause, their Lordships of the Supreme Court in T.R.Thandur v. Union of India AIR 1996 SC 1643 held in para 8 of the Judgment as under :-

> "We would first construe Section 20 of the Act to ascertain its meaning. It is obvious that there being no question of constitutional

> validity of the provision, an attempt has to be made to ascertain the true meaning of every part of Section 20. Section 20 contains the power to exempt. It has two sub-sections. Sub-section (1) begins with the non-obstante clause "Notwithstanding anything contained in any of the foregoing provisions of this Chapter", after which occur Clauses (a) and (b) therein which provide for exemption, "subject to such condition, if any, as may be specified in the order", of "such vacant land from the provisions of this Chapter". The non-obstante clause clearly indicates that Section 20 over-rides the foregoing provisions of Chapter III, that is, Sections 3 to 19 of the Act. This is reaffirmed in Clauses (a) and (b) wherein the concluding part in each is "Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter". The effect of the non-obstante clause at the beginning of sub-section (1) and the concluding words in Clauses (a) and (b) undoubtedly is that on exemption being granted subject to the conditions specified in the order granting the exemption."

Mr.Dhankar, learned senior counsel for the respondents, has also referred to the case of M.Venugopal v. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and Another (AIR 1994 SC 1343) and submitted that the effect of non obstante clause is to obliterate in regard thereto the provisions which were earlier applicable. In para 12, their Lordships of the Supreme Court held as under :-

> "12. The Industrial Disputes Act as well

> as the Corporation Act both have been framed by the Parliament. But the amendments aforesaid have been introduced in the Corporation Act in S.48 with effect from 31.1.1981 with a non obstante clause. In sub-section (2C), the intention of the Parlaiment has been apparent and obvious. It was pointed out in Ashwini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369; A.V. Fernandez v. State of Karala, AIR 1957 SC 657 and South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, that the effect of non obstante clause is to obliterate in regard thereto the provisions which were earlier applicable. The framers of the Corporation Act through the amendments aforesaid have given the provisions of the Corporation Act an overriding effect over the provisions of the Industrial Disputes Act.

While considering the conflict between a general provision and a special provision of the Rule, their Lordships of the Supreme Court in the case of the Commissioner of Income-tax, Patiala v. M/s.Shahzada Nand and sons and Others (AIR 1966 SC 1342) held as under :-

> "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient. The expressed intention must guide the Court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim generalia specialibus non derogant, which means that when there is a conflict between a general and a

> special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p.205, thus:
>
> The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

Heard learned counsel for the parties and scanned and scrutinized the material available on record.

In order to resolve the controversy, in the instant case, it will be useful to quote, consider and evaluate each and every relevant provisions of the Rajasthan Police Service Rules, 1954 as well as amendments thereof.

It may be mentioned that Part V of the Rules, 1954 provides procedure for recruitment by promotion. Rule 27 lays down the criteria for selection. Rule 27A says that no officer shall be considered for promotion unless he is substantively appointed and confirmed on the next lower post. Similarly, Rule 28 lays down the procedure for selection and Rules 28-A provides the revised criteria, eligibility and procedure for

promotion to Junior, Senior and other posts encadred in the service. Sub-rule (11) of Rule 28-A throws light with regard to validity of the rule and importance of words 'Outstanding' and 'Very Good'. Rule 28AA deals with the restriction of promotion of persons foregoing promotions.

It will be convenient to quote the relevant Rules of the Rajasthan Police Service Rules, 1954, which read as under :-

> **27. Criteria for selection (1)** For the purposes of recruitment by promotion, a selection strictly on seniority-cum-merit shall be made from among all the Inspectors, who are eligible for promotion under the provisions of these Rules, on the first day of the month of April of the year of selection.
>
> **Explanation :-** In case direct recruitment to a post has been made earlier than regular selection for promotion in a particular year, such of the persons, who are or were eligible for appointment to that post by both the methods of recruitment and have been appointed by direct recruitment first, shall also be considered for promotion.
>
> **27-A.** No officer shall be considered for promotion unless he is substantively appointed and confirmed on the next lower post. If no officer substantive in next lower post in eligible for promotion, officers who have been appointed on such post on officiating basis after selection in accordance with one of the methods of recruitment or under any Service Rules promulgated under proviso to Article 309 of the Constitution of India, may be considered for promotion on

officiating basis only in the order of seniority in which they would have been had they been substantive on the said lower post.

28. Procedure for selection :-

(1) to (8) …. ……. ……. …… ….. ….. ….. …. …. …"

(9)For the posts falling in general cadre a Committee consisting of the Chairman of the Commission or a member nominated by him as Chairman, the Secretary to the Government in the Home Department or the Special Secretary concerned nominated by him, the Special Secretary to Government in the Department of Personnel, the Inspector General of Police as members and Additional Inspector General of Police (Senior most) as Member-Secretary of the Committee and for the posts included in Schedule 1-A, a Committee consisting of the Chairman of the Commission or a member nominated by him as Chairman, the Special Secretary to the Government in the Department of Personnel or his nominee not below the rank of Deputy Secretary, Secretary to the Government in the Home Department, the Inspector General of Police as Members and the Director, State Police Wireless as Member – Secretary to the Committee (hereinafter called the Selection Committee) shall consider the cases of all the candidates recommended by the Inspector General of Police as well as those not considered suitable by him, interviewing such of them as they consider necessary and shall select a number of candidates equal to the number of vacancies in the Service to be filled by promotion including likely officiating appointments and shall arrange their names in a list in a order of seniority. If any person's name recommended in the previous year is deleted from the select list or a person ignored in the previous year is selected in the subsequent year, the reasons for such deletion or addition shall be recorded by the

Selection Committee. They shall also select from the remaining candidates a number which, shall be 50% of the total number of candidates selected for the fist list and shall arrange their names in a supplementary list in order of seniority.

Provided that in case any Member or Member-Secretary, as the case may be, constituting the Committee has not been appointed to the post concerned, the officer holding charge of the post for the time being shall be the Member or Member-Secretary, as the case may be, of the Committee.

(10) to (13) ……. …… …… ….. ….. … … …. ….

28-A. Revised Criteria, Eligibility and Procedure for Promotion to Junnior, Senior and other posts encadred in the Service –

(1)- As soon as the Appointing Authority determines the number of vacancies under rule regarding determination of vacancies of these Rules and decides that a certain number of posts are required to be filled in by promotion, it shall, subject to provisions of sub-rule (9), prepare a correct and complete list of the senior-most persons who are eligible and qualified under these Rules for promotion on the basis of seniority-cum-meirt or on the basis of merit to the class of posts concerned.

(2)- …… ….. ……. …….. …

(3)- …… …… …… ….. ……. ….

(4) Selection for promotion in the regular line of promotion from the post/posts not included in Service to the lowest post or category or post in the Service shall be

made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50

Provided that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules.

(5)- …… …… …… ……

(6)- Selection for promotion to all other higher posts or higher categories of posts in the State Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50

Provided that if the Committee is satisfied that suitable persona are not available for selection by promotion strictly on the basis of merit in a particular year, selection bhy promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these Rules.

Explanation :- If in a service, in any category of post, number of posts available for promotion is an odd number then for purpose of determining the vacancies for selection by promotion on the basis of seniority-cum-merit in the proportion of 50 : 50, the following cyclic order shall be followed :-

The first vacancy by seniority-cum-merit;

The subsequent vacancy by merit;

The cycle to be repeated.

(7) to (16) …….. …… ……

…….. ……. ……

Sub-rule (11), Explanation – Validity of rule – Words 'Outstanding' and 'Very good' – Import of . – The Explanation clearly provides that only persons having outstanding record will be selected. There was no necessity to preface or clarify 'outstanding' with word consistently because it has only to be 'outstanding'. It only provides that if it is not outstanding then it has to be consistently very good. Thus 'Very good' has been equated with 'outstanding'. Courts will not substitute their own wisdom for law framers. This has been the intention of law framers that 'outstanding' and 'very good' should be clubbed together and if a person's record is outstanding or it is consistently very good for seven years then alone he can be considered as meritorious and not otherwise. It is not a case of making unequals as equals. The rule specifically provides that for coming into the category of merit one should have either an outstanding or consistently very good record and if he does not possess that, then he cannot be considered to be meritorious and if that has been the intention of rule framers then it has to be given effect because it does not militate against any principle of equality. Merit has been defined and it gives enough guidelines that only that person will be considered meritorious who has 'outstanding record' or consistently 'very good' record. Govind Narayan v. State, 1992 (1) WLC 323.

28AA. Restriction of promotion of persons foregoing promotions - In case a person, on his appointment by promotion to the next higher post either on the basis of urgent temporary appointment or on regular basis on the recommendations of the Departmental Promotion Committee, forgoes such an appointment, he shall be considered again for appointment by promotion only after a period of one year (both on the basis of

urgent temporary appointment or on regular basis, on the recommendations of the Departmental Promotion Committee).

Rule 28-AAA provides **Out of turn** promotion for gallantry. It may be mentioned that in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, His Excellency, the Governor of Rajasthan, was pleased to make the amendment and add Rule 28-AAA, proviso (vi) to Rule 33 and Schedule V to the Rajasthan Police Service Rules, 1954. The necessary amendments read as under :-

AMENDMENT.

(1)- After the existing Rule 28-AA, the following new Rule 28-AAA shall be added, namely :-

"28-AAA. Out of turn promotion for gallantry . – (1) Notwithstanding anything contained in these Rules; and Inspector/Company Commander shall be considered for appointment by promotion to the ordinary time scale of the service by the committee referred to in Rule 28 on the recommendation of the Inspector General in the form prescribed in Schedule – V for an **outstanding work of gallantry;**

(2)- On the basis of recommendation of the Committee, the Government shall appoint such Inspector/Company Commander to the

service;

(3)- The promotion under this Rule shall be against the vacancy to be filled on the basis of merit in the that particular year.**"**

(2)- After the existing proviso (v) to Rule 33, the following new proviso shall be added, namely :-

"(VI) that the person appointed under the provision of Rule 28-AAA shall rank junior to all persons senior to him and appointed by promotion in the same year."

(3)- After the existing Schedule IV appended to the said Rules, the following new Schedule V shall be added namely :-

"SCHEDULE – V

(See Rule 28-AAA)

Form of recommendation for promotion of Inspectors/Company Commanders to the services :-

1. Name of District : ……
2. Name of Employee: ……
3. Designation : ……..
4. Place of posting:…….
5. Total length of service in Rajasthah Police Force on **1st** January …….(years to which the vacancy relates). …… ……..

6. Remarks as to integrity : …….

7. Description of the work of gallantry : ……. ..

Signature and designation of "The recommending Authority."

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan, vide Notification No. F.7 (5) DOP/A-II/2002 dated July 23, 2003,(Annexure 4) was also pleased to make the following rules, further to amend the various Service Rules as mentioned in the Schedule appended hereto; namely, the Rajasthan Various Service (……..Amendment) Rules, 2003. Point No.1 of the Notification deals with the short title and commencement of the rules, whereas Point No. 2 - **Amendment -** provides that the existing rule as mentioned in column No.3 against each of the Service Rules as mentioned in column No.2 of the Schedule appended herewith, shall be substituted by the following namely :-

The relevant part of the aforesaid Notification dated July 23, 2003 (Annexure 4) reads as under :-

Criteria, Eligibility and Procedure for Promotion :- (1) As soon as the Appointing

Authority determines the number of vacancies under rule regarding determination of vacancies of these rules and decides that a certain number of posts are required to be filled in by promotion, it shall subject to the provisions of sub-rule (6), prepare a correct and complete list of the senior most persons who are eligible and qualified under these rules for promotion on the basis of merit to the class of posts concerned.

(2) The persons enumerated in the relevant column regarding post from which promotion is to be made, of the relevant Schedule shall be eligible for promotion to posts specified against them in column 2 thereof to the extent indicated in column 3 subject to their possessing minimum qualifications and experience on the first day of the month of April of the year of selection as specified in the relevant column regarding minimum qualification and experience for promotion.

(3) …….. …… ……

…….. ……..…… …… .....

(4) No person shall be considered for promotion for five recruitment years from the date on which his promotion becomes due, if he/she has more than two children on or after 1st June, 2002.

(i) the persons having more than two children shall not be deemed to be disqualified for promotion so long as the number of children he/she has on 1st June, 2002 does not increase.

(ii) where a Government servant has only one child from the earlier delivery, but more than one child are born out of a single subsequent delivery, the children so born shall be deemed to be one entity while counting the total number of children.

(5) Selection for promotion on the post included in the service shall be made on the basis of seniority-cu m-merit.

Provided that promotion on the highest post in the state service if it is atleast third promotion shall be made on the basis of merit alone.

Provided further that if the Committee is satisfied that suitable persons are not available for selection by promotion to the highest post (s) strictly on the basis of merit in a particular year, selection by promotion to the highest post (s) on the basis of seniority cum merit may be made in the same manner as specified in these rules.

(6) to (9) …… …….. …… …… …… ……. ....

(10) List prepared under sub-rules (8) and (9) shall be sent to the Appointing Authority together with Annual Confidential Reports/Annual Performance Appraisal Reports and other Service Records of all the candidates included in the lists as also of those not selected, if any.

<u>Explanation</u> :- For the purpose of selection for promotion on the basis of merit, no person shall be selected if he does not have 'Outstanding' or 'Very Good' record of at least four out of seven years preceding the year for which the meeting of the committee is held.

(11) If in any subsequent year, after promulgation of these rules, vacancies relating to any earlier year are determined under these rules which were required to be filled in by promotion, the Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relate irrespective of the year in which meeting of the Committee is held and such promotion shall be governed by the

criteria and procedure for promotion as was applicable in the particular year to which the vacancies relate and the service/experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. The copy of a person who has been so promoted shall be re-fixed at the pay which he should have derived at the time of this promotion but no arrears of pay shall be allowed to him.

(12) to (16) ……. …… ……
…….. …… ……...……

(17) The provisions of this rule shall have effect notwithstanding anything to the contrary contained in any provision of these Rules."

SCHEDULE

S.No.	**Name of Service Rules**	**No. of Rule.**
1.	The Rajasthan Administrative Service Rules,1954	28B
2.	The Rajasthan Police Service Rules, 1954.	28A
3.	The Rajasthan Accounts Service Rules, 1954.	28A
4.	The Rajasthan Secretariat Service Rules, 1954.	11B
5.	The Raj. Inspectors of Registration and Stamp Service Rules. 1954	24A

It may be mentioned that under Rule 9, the Appointing Authority determines on 1st April of every year the actual number of vacancies occurring during the financial year. Rule 28 deals with the procedure for selection. Rule 28-A

provides that as soon as the Appointing Authority determines the number of vacancies under these Rules and decides that a certain number of posts are required to be filled in by promotion, it shall, subject to the provisions of sub-rule (9), prepare a correct and complete list of the senior-most persons who are eligible and qualified under these Rules for promotion on the basis of seniority-cum-merit or on the basis of merit to the class of posts concerned. Sub-rule (4) of Rule 28A lays down that the selection for promotion in the regular line of promotion from the post/posts not included in Service to the lower post or category of post in the service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50 : 50 ratio. However, an explanation has been added that for the purpose of selection for promotion on the basis of merit, no person shall be selected if he does not have "Outstanding" or "Very Good" record in at least five out of the 7 years preceding the year for which D.P.C. is held. Rule 28AA provides restriction of promotion of persons foregoing promotions. It says that if a person forgoes the promotion, then he shall be considered again for promotion only after a period of one year.

It is admitted position that prior to amendment made in the year, 2003, there were two channels of promotion for the post of Deputy Superintendent of Police, one was merit

and another was seniority-cum-merit, but after amendment vide Notification dated 23.7.2003 (Annexure 4), there is only one channel of promotion, i.e., seniority-cum-merit.

Rule 28-AAA inserted vide Notification dated 18/19.2.1998, provides **out of turn** promotion for gallantry. It is also admitted position that after insertion of Rule 28AAA, no amendment has been made in the Rules. Apart from that, promotion in terms of Rule 28-AAA, is not a general promotion. It is an **out of turn** promotion, which is awarded to the upright officers looking to their gallantry performance in the Government service. Not only that, even Rule 28AAA, having a non-obstante clause, has an overriding effect over all the Rules. Sub-rule (3) of Rule 28-AAA says that the promotion under this Rule shall be against the vacancies to be filled on the basis of merit in that particular year. Similarly, new proviso (VI) to Rule 33 provides that the officer promoted under Rule 28AAA shall rank junior to all the persons who are senior to him in that cadre. Rule 28-AAA has a non-obstante clause, on account of which, it will have an overriding effect over all the provisions of the Rules, as is clear from the opening words **"Notwithstanding anything contained in these Rules**". Apart from that out of turn promotion for gallantry in terms of Rule 28AAA, is different than the promotions in terms of Rule 28A of the Rules, 1954. In addition to that, there is

merit consideration for an out of turn promotion for gallantry. In this view of the matter, the contention of the learned counsel for the petitioners that the provision has become redundant, does not hold a good ground. It may also be mentioned that earlier promotions of the two persons, namely, Shri Bhupendra Singh and Shri Vipin Sharma, who were given gallantry promotions in the years, 2002-03 and 2003-04, have not been challenged by the petitioners. According to Rule 375 (4) of the Rajasthan High Court Rules, if the relief claimed is not founded on the same cause of action, then joint writ petition cannot be maintained. Apart from that, the matter of out of turn promotion of five persons, as alleged by the petitioners, has not attained finality and their promotion matter is under process. It is significant to note that the validity of Rule 28AAA has also not been challenged by the petitioners.

Sofar as Rule 28A is concerned, it is admitted position that prior to amendment made in the year, 2003, there were two channels of promotion for the post of Deputy Superintendent of Police, namely (i) merit and (ii) seniority-cum-merit, but after amendment in July, 2003, there remains only one channel of promotion, i.e., seniority-cum-merit.

With regard to Rule 28AAA, which was inserted vide Notification dated 18/19.2.1998, it may be mentioned that it is an independent rule, having no relevance with the procedures

provided under other Rules. The beginning words of Rule 28AAA clearly indicate that this rule is having a separate entity and separate importance and has been inserted by the Legislature with the object to give **out of turn** promotion to those persons who have performed Outstanding work of gallantry, which is not expected in usual discharge of duty. Merit is the basis of gallantry work and **out of turn** promotion is awarded in terms of Rule 28AAA. On the basis of seniority-cum-merit, general promotions in terms of Rule 28A can be made. To reward such persons, Rule 28AAA has been inserted and it is now well proved that more efficient officers who are rewarded by way of **out of turn** promotion have subsequently proved to be an asset to the Department. In case if such persons, who have put their lives to risk, while performing their duties, would not be rewarded by granting them out of turn promotion, then certainly, it will effect their efficiency and skill and it is clear from proviso (vi) to Rule 33 that person promoted under Rule 28AAA shall rank junior to all persons senior to him. Thus, the promotions made under Rule 28-AAA are extraordinary promotions and cannot be equated with the normal and regular promotions given under Rule 28A of the Rules.

It is settled legal proposition that a construction which results in hardship, serious inconvenience, injustice,

absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system should be avoided by harmonious construction. It is also settled rule of construction that where, in an enactment, two provisions which cannot be reconciled with each other, they should be interpreted in such a manner that, if possible, effect should be given to both of them. Thus, the harmonious construction of the rule indicates that provisions of Rule 28A as well as provisions of Rule 28AAA can be given full effect, without generating any inconsistency between both of them. When there are two conflicting provisions in the Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction". A combined reading of Rule 28AAA and Rule 33 would would leave no manner of doubt that reading out of provisions of Rule 28A would not bring any conflict or generate any prejudice to the beneficiary of Rule 28A.

The object and purpose of the Statute can be given effect to only in case of ambiguity and not otherwise. It may be mentioned that the purposive construction applies in preference to literal construction. Every part of the provision should be given meaning and effect in the context of the Statute. Apart from that, the Statute should be read in entirety

and purport and object of Act ought to have been given its full effect by applying the principle of purposive construction.

If a statutory provision is open to more than one interpretations, the court has to choose that interpretation which represents the true intention of the legislature. The function of the court is only to expound and not to legislate. The process of construction combines both literal and purposive approaches.

The most fair and rational method for interpreting a Statute is by exploring the intention of the Legislature through the most natural and probable sings which are either the words, the context, the subject-metter, the effects and consequences, or the spirit and reason of the law.

In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the Statute.

The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will

carry out the obvious intention of the Legislature. Undoubtedly, if there is a defect or an omission in the words used by the Legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a Statute or read words into it which are not there, especially when the literal reading produces an intelligible result. Wrong must not be left unredeemed and right not left unenforced. Sofar as interpretation of ambiguous Statutes is concerned, in the absence of precedents, court must be guided by sound logic, rational thinking, common sense and the urge to act for the public good. It is also well settled that a beneficent provision of the legislation must be liberally constructed so as to fulfil the statutory purpose and not to frustrate it.

It may be mentioned that no reservation quota for general promotion as well as gallantry promotion has been prescribed in the Rules, after amendment, in the year, 2003.

After amendment, there are two modes of awarding promotion: (i) by giving general promotion on the basis of seniority-cum-merit in terms of Rule 28A; and (ii) by awarding gallantry promotion, on the basis of merit in terms of Rule 28AAA. Apart from that, gallantry promotion under Rule 28AAA is an **out of turn** promotion and is a special kind of promotion and it has a non-obstante clause, on account of which, it has over-riding effect over all the Rules, as is evident from its

words beginning from "**notwithstanding anything contained in these Rules".** To boost the moral of the police force, it is necessary to award most competent and deserving persons **out of turn** gallantry promotions in terms of Rule 28AAA of the Rules.

If the arguments of the learned counsel for the petitioners as well as the example referred to above is accepted that the purposive interpretation of word 'merit' is 'seniority-cum-merit' in terms of Rule 28AAA and the promotion should be accorded on the basis of seniority-cum-merit only, then it will frustrate the purpose of framing/enacting Rule 28AAA by the Legislature. Rather it will demoralise the persons who have given gallantry performance while discharging their duties. In fact, in order to maintain high moral in police force, Rule 28AAA has been inserted by the Legislature. **Out of turn** promotion for gallantry in terms of Rule 28-AAA is different than the general promotions in terms of Rule 28A of the Rules. Gallantry promotion, as stated above, is a special kind of promotion, which is given **out of turn** on account of gallantry performance, then merit, in this pursuance, is required to be taken into consideration and not in pursuance of seniority-cu-merit after amendment, and before amendment, there was a ratio of 50 : 50, i.e., 50% promotion on the basis of seniority-cum-merit and 50% promotion on the basis of merit and now,

Rule 28AAA is with reference to the vacancies to be filled in on the basis of merit only. Now, the merit is required to be determined on the basis of the outstanding work of gallantry.

The argument of Shri J.P.Joshi, learned counsel for the petitioners that the reply filed on behalf of the Government by Shri N.M.Lodha, learned Additional Advocate General, supports the case of the petitioners that merit is considered as seniority-cum-merit and there is only one channel for promotion, namely, seniority-cum-merit, meaning thereby, the vacancies which could have been filled in on the basis of merit, have merged into seniority-cum-merit and, in such circumstances, the word 'merit' has merged in seniority-cum-merit. So far as Rule 28A is concerned, it is with regard to promotion on the basis of seniority-cum-merit, whereas promotions given in terms of Rule 28AAA, is related to outstanding work of gallantry. Thus, in this view of the matter, the contention raised by the learned counsel for the petitioners that the reply filed by the State Government, supports his contention that the promotion can only be given on the basis of seniority-cum-merit, is devoid of any merit and not tenable. Overall assessment of the reply of the State Government is that, in sum and substance, the State Government has rebutted the contentions of the learned counsel for the petitioners with reference to Rule 28A as well as

Rule 28AAA as alleged by the petitioners. Apart from that, the contention of the petitioners - that after Notification dated 23.7.2003, there could not be any **out of turn** promotion for gallantry in terms of Rule 28AAA of the Rules and if the promotion is required to be given, it should be given on the basis of seniority-cum-merit only, is also not sustainable in the eye of law.

With regard to the promotion in terms of Rule 28A, earlier, there was a quota of 50 : 50, i.e., 50% promotion on the basis of seniority-cum-merit and 50% promotion on the basis of merit only. Thereafter, vide Notification dated 18/19.2.1998, Rule 28AAA – for awarding out of turn promotion for an outstanding work of gallantry - was added and the promotion under this Rule was required to be given on the basis of merit against the vacancy in that particular year. The merit is determined on the basis of outstanding work of gallantry. Since Rule 28AAA begins with the words, **"notwithstanding anything contained in these Rules",** it has an overriding effect on all the provisions of the Rules because of the non obstante claused contained in it. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to all the provisions which are found in the same enactment. Thus, when non obstante clause is applied to the context of the present

Rule with regard to out of turn promotions, it would clearly mean that so far as contrary or inconsistent provisions in the Rules are concerned, they are to be ignored as Rule 28AAA has an overriding effect on them so, after the amendment made in the Rajasthan Police Service Rules, 1954 vide Notification dated 23rd July, 2003, the effect can be given to the provisions of Rule 28AAA and out of turn promotion can be given in terms of Rule 28AAA against the vacancy, which is required to be filled in on the basis of merit, i.e., outstanding work of gallantry, in that particular year. In this view of the matter, the argument of the learned counsel for the petitioner is not sustainable in the eye of law.

The State – respondent is fully entitled to consider the persons for **out of turn** promotion for gallantry in terms of Rule 28AAA of the Rules in respect of the vacancies which are determined in terms of Rule 9 of the Rules on 1.4.2003. It may be mentioned that the Notification dated 23.7.2003 cannot be made applicable to the vacancies determined as on 1.4.2003.

Neither the petitioners have challenged the validity of Rule 28AAA of the Rules, nor the gallantry promotions earlier given to Shri Bhupendra Singh in the year, 2002-03 and Shri Vipin Sharma in the year, 2003-04, who were junior to the petitioners.

In view of the discussions made above, the

arguments of the learned counsel for the petitioners are untenable and not sustainable in the eye of law that after issuance of Notification dated 23.7.2003, no out of turn promotion for gallantry in terms of Rule 28AAA can be made and if the promotion is required to be given, it ought to have been given on the basis of seniority-cum-merit only. The Notification dated 23.7.2003 cannot be made applicable to the vacancies determined as on 1.4.2003 as the provisions introduced under Notification dated 23.7.2003 are neither retrospective in nature nor have retrospective effect.

Thus, taking an over all view of the matter as discussed above, I am of the opinion that after issuance of the Notification dated 23.7.2003 (Annexure 4), out of turn promotions in accordance with the newly inserted Rule 28AAA can be given to the upright police officers on account of gallantry and courageous services rendered by them to the Nation.

However, there should be transparency in awarding **out of turn** promotion for **gallantry** performance. There should also be broad, transparent and clear-cut guidelines for awarding out of turn promotions on the basis of the outstanding gallantry performance, mere recommendations and Outstanding Annual Performance Appraisal Reports are not sufficient grounds for gallantry promotion in terms of Rule

28AAA, as these grounds are sufficient for general promotions in terms of Rule 28A only. Sofar as giving out of turn promotion under Rule 28AAA is concerned, there must be some courageous work or exemplary and exceptional performance or a very difficult and extraordinary task, coupled with transparency, performed by the honest, upright, deserving and most competent police officer.

In the result, I find no merit in the instant petition. The writ petition is, therefore, dismissed, as indicated above.

There will be no order as to costs.

(R.P.VYAS),J.

scd